



May 18, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-1983

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 135364.

The Texas Department of Criminal Justice (the "department") received a request for several categories of information relating to an attack on a particular inmate on a specified date, including the officers report, the grievance investigators report, the grievance complaint, the inmate's I-60 request and complaint and life endangerment letter, and the names of certain employees of the department who were involved in the investigation and reporting of the incident. You have submitted information that the department deems to be responsive to the request and seeks to withhold from disclosure. You claim that the submitted information is excepted from disclosure under sections 552.107, 552.108, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

Section 552.131 of the Government Code relates to inmates of the department.² Section 552.131 provides in relevant part:

¹We presume that any responsive information not submitted in connection with your request for this letter ruling has been released to the requestor. See Gov't Code §§ 552.301(e)(1)(D), 552.302. We caution you, however, that chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. See Gov't Code §§ 552.101, 552.352.

²As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76th Leg., R.S., ch. 783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure [:]

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.131 subject to section 552.029. Pursuant to section 552.029, "basic information" regarding an incident involving the use of force is subject to required disclosure. Gov't Code § 552.029(8). In this instance, the incident report that you submitted reflects that the incident in question involved a major use of force. Consequently, basic information about that use of force is subject to required disclosure under section 552.029(8). Basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of the inmate and of department officials who were directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The rest of the information in the submitted records relating to the inmate is excepted from disclosure under section 552.131(a).

You also claim that the submitted records are excepted from disclosure under section 552.107 of the Government Code in conjunction with the decision of the federal court in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Section 552.107(2) provides that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). The Stipulated Modification of the Amended Decree in the *Ruiz* case restricted the dissemination of "sensitive information" regarding inmates. See Open Records Decision No. 560 (1990). However, the final judgment in *Ruiz*,

entered on December 11, 1992, gave the Texas Board of Criminal Justice (the "board") authority to define the term "sensitive information." On January 21, 2000, the board met and, acting under the authority of the final judgment in *Ruiz*, determined that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." Thus, the board has determined that information that is within one of the categories delineated in section 552.029 of the Government Code is not "sensitive information" that the department may withhold from the public under section 552.107(2) in conjunction with the *Ruiz* decision. Therefore, basic information about a use of force is not excepted from disclosure under section 552.107 of the Government Code and must be released in accordance with section 552.029(8).

You also claim that the department may withhold the requested names of certain correctional officers under section 552.108 of the Act, the "law enforcement exception." Section 552.108 provides in relevant part that "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (holding that predecessor statute applied to information held by a law enforcement agency if its release would unduly interfere with law enforcement and crime prevention). A governmental body that seeks to withhold information under section 552.108(b)(1) must reasonably explain, if the requested information does not do so on its face, how and why release of the information would interfere with law enforcement or crime prevention. *See* Open Records Decision No. 434 at 2-3 (1986).

On previous occasions, this office has concluded that section 552.108 excepts from public disclosure information relating to the security or operations of a law enforcement agency, including the department. *See, e.g.*, Open Records Decision Nos. 531 at 3 (1989) (detailed guidelines regarding a police department's use of force policy excepted from disclosure), 508 at 3 (1988) (information relating to future transfers of prisoners to department could be protected), 413 at 1-2 (1984) (sketch showing security measures for forthcoming execution protected). In this instance, the requestor seeks the names of certain officers, including a building major, a building supervisor captain, a lieutenant, a sergeant, and the escorting, witnessing, and picket control officers, who were involved in the department's investigation and reporting of an attack on an inmate. We understand you to claim that the disclosure of the names of the officers who were performing those functions on the date in question might compromise the safety and security interests that we have addressed in prior rulings. Having considered your arguments and reviewed the information that the department seeks to withhold, we are not satisfied that you have established that the release of the information at issue here would result in any demonstrated threat to safety or security. Accordingly, we conclude that the requested names of correctional officers are not excepted from disclosure

under section 552.108. *See* Open Records Decision No. 508 at 3 (1988) (concluding that Travis County sheriff had failed to demonstrate that release of information relating to previous transfers of inmates from the county jail to the department would unduly interfere with law enforcement efforts).

In summary, basic information about the use of force is subject to disclosure under section 552.029(8) and may not be withheld under section 552.107(2). The rest of the information in the submitted records must be withheld from disclosure pursuant to section 552.131. The requested names of officers involved in the investigation and reporting of the attack on the inmate are not excepted from disclosure under section 552.108 and must be released. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

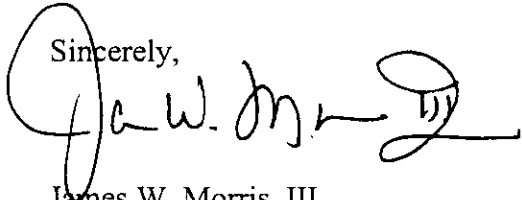
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 135364

Encl. Submitted documents

cc: Ms. Olga Garcia
P.O. Box 704
Grapevine, Texas 76099
(w/o enclosures)